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MAY 11 2004

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PATENT
Expedited Procedure
After Final Response
Under 37 CFR 1.116

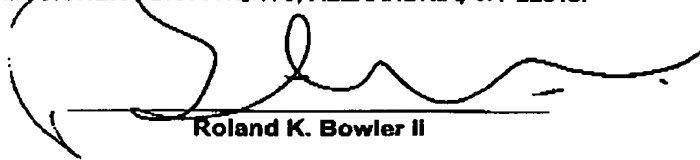
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Certificate of Facsimile Under 37 CFR 1.8

I hereby certify that this correspondence is being transmitted via facsimile to 703-872-9306 on 11 MAY 2004 addressed to: COMMISSIONER FOR PATENTS, ALEXANDRIA, VA 22313.



Roland K. Bowler II

Applicant:	KFOURY ET AL.)	
)	Examiner J. Chiang
Appl. No.	09/941,521)	
)	Art Unit 2642
Confirm. No.	7363)	
)	Atty. Docket No. CS10289
Filed:	29 August 2001)	
Title:	"Electronic Device With Rotatable Keypad And Display"		

TRANSMITTAL FOR PETITION
UNDER 37 CFR 1.181

Commissioner for Patents
Alexandria, Virginia 22313

KFOURY ET AL.
"Electronic Device With Rotatable
Keypad And Display"
Atty. Docket No. CS10289

Petition Under 37 CFR 1.181
Appl. No. 09/941,521
Examiner J. Chiang
Art Unit 2642

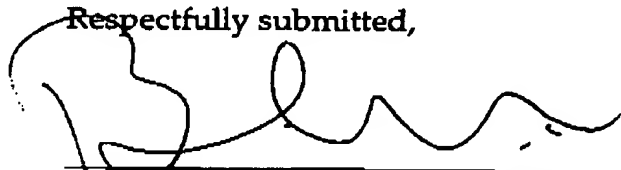
Sir:

The following is enclosed in response to the final Office Action 3
March 2004:

☒ [X] Petition under 37 CFR 1.181 (6 pages);

☒ [X] Fee Calculation Sheet (Duplicate) including
authorization for the Commissioner of Patents & Trademarks to any fees
required under 37 CFR 1.16 & 1.17 from, and to credit any excess fees paid to,
Motorola Inc., Deposit Account No. 50-2117, Customer No. 20280 in connection
with the filing of the referenced materials.

Respectfully submitted,



ROLAND K. BOWLER II 11 MAY 2004
REG. NO. 33,477

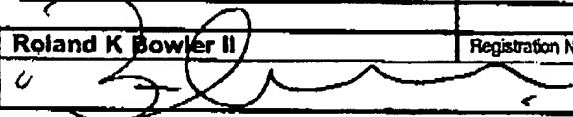
MOTOROLA, INC.
INTELLECTUAL PROPERTY DEPT. (RKB)
600 NORTH U.S. HIGHWAY 45, AN475
LIBERTYVILLE, ILLINOIS 60048

TELEPHONE NO. (847) 523-3978
FACSIMILE NO. (847) 523-2350

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MAY 11 2004

FEE TRANSMITTAL Patent fees are subject to annual revision		<i>Complete if Known</i>	
		Application Number	09/941,521
		Filing Date	29 August 2001
		First Named Inventor	KFOURY
		Examiner Name	J. Chiang
		Group Art Unit	2842
TOTAL AMOUNT OF PAYMENT		(\$)	140.00
		Attorney Docket No.	CS10298

METHOD OF PAYMENT				FEE CALCULATION (continued)																																																																																																																																																									
1. <input checked="" type="checkbox"/> The Commissioner is hereby authorized to charge indicated fees and credit any overpayment to: Deposit Account Number 502117 Deposit Account Name Motorola, Inc. <input checked="" type="checkbox"/> Charge Any Additional Fee required under 37 CFR 1.16 and 1.17 <input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27				3. ADDITIONAL FEES <table border="1"> <thead> <tr> <th>Large Entity</th> <th>Small Entity</th> <th>Fee</th> <th>Fee</th> <th>Fee Description</th> </tr> </thead> <tbody> <tr><td>1051</td><td>130</td><td>2051</td><td>65</td><td>Surcharge - late filing fee or cash</td></tr> <tr><td>1052</td><td>50</td><td>2052</td><td>25</td><td>Surcharge - late Provisional filing</td></tr> <tr><td>1053</td><td>130</td><td>1053</td><td>130</td><td>Non-English specification</td></tr> <tr><td>1812</td><td>2520</td><td>1812</td><td>2520</td><td>For filing a request for ex parte Reexamination</td></tr> <tr><td>1804</td><td>920*</td><td>1804</td><td>920*</td><td>Requesting publication of SIR prior to Examiner action</td></tr> <tr><td>1805</td><td>1840*</td><td>1805</td><td>1840*</td><td>Requesting publication of SIR after Examiner action</td></tr> <tr><td>1251</td><td>110</td><td>2251</td><td>55</td><td>Extension for reply within first month</td></tr> <tr><td>1252</td><td>410</td><td>2252</td><td>205</td><td>Extension for reply within second month</td></tr> <tr><td>1253</td><td>930</td><td>2253</td><td>465</td><td>Extension for reply within third month</td></tr> <tr><td>1254</td><td>1450</td><td>2254</td><td>725</td><td>Extension for reply within fourth month</td></tr> <tr><td>1255</td><td>1970</td><td>2255</td><td>985</td><td>Extension for reply within fifth month</td></tr> <tr><td>1401</td><td>320</td><td>2401</td><td>180</td><td>Notice of Appeal</td></tr> <tr><td>1402</td><td>320</td><td>2402</td><td>160</td><td>Filing a brief in support of an appeal</td></tr> <tr><td>1403</td><td>280</td><td>2403</td><td>140</td><td>Request for oral hearing</td></tr> <tr><td>1451</td><td>1510</td><td>1451</td><td>1510</td><td>Petition to institute a public use proceeding</td></tr> <tr><td>1452</td><td>110</td><td>2452</td><td>55</td><td>Petition to revive - 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Art Unit 2642

U.S. Patent 6,349,221 (Wolf). Claims 11 and 12 were rejected under 37 CFR 103(a) as being unpatentable under U.S. Patent No. 4,267,409 (Baldoni).

Applicants' Submission Under 37 CFR 1.115

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On 5 February 2004, Applicants filed a preliminary amendment under 37 CFR 1.115. Claims 26-28 were added. Applicants and their undersigned representative were unaware of the non-final Office action mailed on 2 February 2004 at the time the submission under 37 CFR 1.115 was prepared and filed in the Patent Office. Applicants' submission under 37 CFR 1.115 filed on 5 February 2004 did not address any of the issues raised in the Office action mailed on 2 February 2004

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Examiner's Final Rejection

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A final Office Action was mailed on 3 March 2004 in response to the submission under 37 CFR 1.115 filed on 5 February 2004. Claims 1-8, 10 & 14-28 were rejected under 35 USC 102(e) for anticipation by U.S. Patent No. 6,593,914 (Nuovo). Claim 9 was rejected under 35 USC 103(a) as being unpatentable over Nuovo in view of U.S. Patent 6,349,221 (Wolf). Claims 11 and 12 were rejected under 37 CFR 103(a) as being unpatentable under U.S. Patent No. 4,267,409 (Baldoni). The Examiner asserted that the finality of the rejection was necessitated by the amendment.

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Applicant's After Final Response

5 On 8 April 2004, Applicant filed a response to the final Office
Action under 37 CFR 1.116 including an affidavit under 37 CFR 1.131 swearing
back of U.S. Patent No. 6,593,914 (Nuovo).

Examiner's Advisory Action

10 On 22 April 2004, the Examiner mailed an Advisory Action
refusing entry of the "remarks" in Applicants after final response of 4 April
2004. In a subsequent telephone exchange with Applicants representative on
or about 7 May 2004, the Examiner clarified that consideration of the Affidavit
under 37 CFR 1.131 was refused on the basis that is was submitted untimely.

15 Applicant's Notice & Appeal

On 28 April 2004, the Applicants filed a Notice of Appeal and
supporting brief.

20 In a subsequent telephone exchange with Applicants
representative on or about 7 May 2004, the Examiner clarified that
consideration of the Affidavit under 37 CFR 1.131 was refused on the basis that
is was submitted untimely.

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**Notice of Impropriety of Final Rejection &
Demand for Withdrawal of Final of Rejection**

Impropriety of Final Rejection

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The finality of the Office Action mailed on 3 March 2004 is improper, since Applicants did not respond to the previous non-final Office Action mailed on 2 February 2004.

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Under the Commissioner's examination guidelines, MPEP 714(e), amendments received by the Office after the mail date of the first office action are considered non-responsive to the Office action. MPEP 714(e) states that the

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... Office will not mail a new Office action [in response to an amendment received after the mailing of a first Office action], but simply advise the applicant that the amendment is nonresponsive to the first Office action and that a responsive reply must be timely filed to avoid abandonment. See MPEP 714.03

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Applicants' Submission under 37 CFR 1.115 adding new Claims 26-28 was not responsive to the non-final Office Action mailed on 2 February 2004 as required under 37 CFR 1.111 for among, other reasons, failure to request reconsideration and failure to reply to every ground for objection a rejection in the Office Action. As noted, Applicants 37 CFR 1.115 submission merely added new claims. Moreover, at the time the 37 CFR 1.115 submission was filed, Applicants were not yet on notice that the application was the subject of an action on the merits.

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Therefore in response to receiving Applicants' submission under 37 CFR 1.115, the Examiner should have refused entry and consideration of the amendment. The finality of the rejection in the Office action of 3 March 2004,

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in response to the submission under 37 CFR 1.115, was therefore improper and must be withdrawn.

Request for Condieration of Affidavit Under 37 CFR 1.131

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The Examiner contends that Applicants affidavit was untimely for its submission after the rejection was made final. As noted above, however, the finality of the rejection is believed to have been improper, and withdrawal of its finality will render moot the issue of the timeliness of the affidavit.

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The affidavit under 37 CFR 1.131 was nevertheless submitted timely whether or not the finality of the rejection is ultimately withdrawn. The guidelines for seasonal presentation of an affidavit under 37 CFR 1.131 set forth in MPEP 715.09 are the circumstances under which an affidavit is considered to be timely. The guidelines however do not indicate that a non-compliant affidavit is untimely.

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Applicants' affidavit under 37 CFR 1.131 was submitted with Applicants first reply to an office action on the merits. Under these circumstances, Applicants response and affidavit should be considered timely and given consideration. Alternatively, under the guidelines at MPEP 715.09, a affidavit is considered seasonable if it submitted

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... (1) with a first reply after final rejection for the purpose of overcoming a new ground of rejection or requirement made in the final rejection....

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In the instant applicaiotn, the Examiner contends at paragraph 6 of the final Office action mailed on 3 March 2004 that "... Applicant's amendment [submission under 37 CFR 1.115] necessitated the new ground(s)

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for rejection presented in this office action." On this basis, pursuant to MPEP 715.09, Applicant's affidavit under 37 CFR 1.131 was timely since it was presented in response to a new ground of rejection or requirement made in the final Office action.

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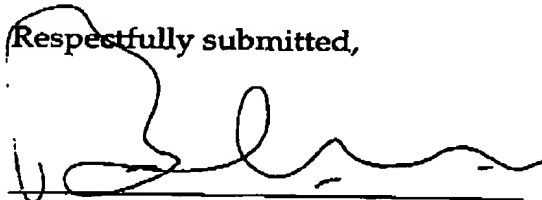
Prayer for Relief

In view of the discussion above, kindly remand the instant application to the Examiner with instructions to withdraw the finality of the rejection and/or at least enter and consider Applicants' response under 37 CFR 1.116 including the Affidavit under 37 CFR 1.131 filed on 8 April 2004.

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Respectfully submitted,


ROLAND K. BOWLER II 11 MAY 2004
REG. NO. 33,477

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